--- F.Supp.2d ----, 2009 WL 4667101 (D.N.J.), 187 L.R.R.M. (BNA) 2839, 158 Lab.Cas. P 60,907
(Cite as: 2009 WL 4667101 (D.N.J.))

United States District Court, D. New Jersey.
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION NO. 27, AFL-CIO, Plaintiff,
v.
E.P. DONNELLY, INC., and Sambe Construction Co. Inc., Defendants.
Civil No. 07-3023 (RMB/JS).
Dkt. Ents. Nos. 90, 91, 92.

Dec. 3, 2009.

Background: Union representing sheet metal workers sued general contractor and roofing subcontractor on public community center construction project, alleging that by assigning roofing work to competing union that was not signatory to project labor agreement (PLA) and refused to execute it they committed breach of contract and violated New Jersey statute authorizing PLAs. Court declined to issue preliminary injunction which union sought to enforce awards of arbitrator and Joint Adjustment Board (JAB). Parties all moved for summary judgment.

Holdings: The District Court, Renee Marie Bumb, J., held that:
(1) it would accord preclusive effect to arbitration proceeding, even though award therein was unconfirmed;
(2) assignment of roofing work to competing union violated PLA and caused damage to plaintiff union;
(3) PLA was not preempted by National Labor Relations Act (NLRA);
(4) PLA complied with New Jersey statute authorizing such agreements;
(5) enforcement of arbitration award would not conflict with National Labor Relations Board (NLRB) decision awarding disputed work to competing local;
(6) plaintiffs did not have to further exhaust contractual remedies before bringing suit; and
(7) New Jersey statute authorizing PLAs did not create private right of action.

Motions granted in part and denied in part.

West Headnotes

[1] Contracts 95 ⚿326

95 Contracts
95VI Actions for Breach
95k326 k. Grounds of Action. Most Cited Cases
Under New Jersey law, to establish breach of contract claim, plaintiff has burden to show that parties entered into valid contract, that defendant failed to perform its obligations under contract, and that plaintiff sustained damages as result.

[2] Alternative Dispute Resolution 25T ⚿380

25T Alternative Dispute Resolution
25TII Arbitration
25TII(H) Review, Conclusiveness, and Enforcement of Award
25Tk380 k. Merger and Bar of Causes of Action and Defenses. Most Cited Cases
Judicial proceedings ordinarily accord preclusive effect to arbitrations that have already adjudicated the same claims or defenses, even when the award is unconfirmed.

[3] Alternative Dispute Resolution 25T ⚿380

25T Alternative Dispute Resolution
25TII Arbitration
25TII(H) Review, Conclusiveness, and Enforcement of Award
25Tk380 k. Merger and Bar of Causes of Action and Defenses. Most Cited Cases
Valid and final award by arbitration has the same effects under the rules of res judicata as judgment of court as long as five essential elements of adjudication are satisfied; these are (1) adequate notice to persons who are to be bound by adjudication, (2) right on behalf of party to present evidence and leg-

al argument in support of party's contentions and fair opportunity to rebut evidence and argument by opposing parties, (3) formulation of issues of law and fact in terms of application of rules with respect to specified parties concerning specific transaction, situation, or status, or specific series thereof, (4) rule of finality, specifying point in proceeding when presentations are terminated and final decision is rendered, and (5) such other procedural elements as may be necessary to constitute proceeding sufficient means of conclusively determining matter in question, having regard for magnitude and complexity of matter in question, urgency with which matter must be resolved, and opportunity of parties to obtain evidence and formulate legal contentions.

[4] Labor and Employment 231H 1597

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)4 Proceedings
231Hk1596 Conclusiveness of Award
231Hk1597 k. In General. Most Cited Cases

Strong preference of federal labor policy for private resolution of labor disputes weighs heavily in favor of attributing preclusive effect to full, fair, and final labor arbitration.

[5] Alternative Dispute Resolution 25T 230

25T Alternative Dispute Resolution
25TII Arbitration
25TII(E) Arbitrators
25Tk228 Nature and Extent of Authority
25Tk230 k. Agreement or Submission as Determinative. Most Cited Cases

Scope of arbitrator's task is defined by contract.

[6] Labor and Employment 231H 1599

231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)4 Proceedings
231Hk1596 Conclusiveness of Award
231Hk1599 k. Matters Concluded. Most Cited Cases

District court was bound by arbitrator's finding that subcontractor's assignment of standing seam metal roofing work at public community center to local union with which it had collective bargaining agreement (CBA) but which was not signatory to project labor agreement (PLA) and refused to execute it violated PLA and caused damage to local union that was PLA signatory.

[7] Labor and Employment 231H 968

231H Labor and Employment
231HXII Labor Relations
231HXII(A) In General
231Hk968 k. Preemption. Most Cited Cases

States 360 18.46

360 States
360I Political Status and Relations
360I(B) Federal Supremacy; Preemption
360k18.45 Labor and Employment
360k18.46 k. In General. Most Cited Cases

Generally, NLRA preempts state regulation of labor policy; however, when government entity acts as market participant rather than regulator, normal preemption rules do not apply. National Labor Relations Act, § 1 et seq., as amended, 29 U.S.C.A. § 151 et seq.

[8] Labor and Employment 231H 1243

231H Labor and Employment
231HXII Labor Relations
231HXII(E) Labor Contracts
231Hk1243 k. Preemption. Most Cited Cases

States 360 18.46

360 States

360I Political Status and Relations

360I(B) Federal Supremacy; Preemption

360k18.45 Labor and Employment

360k18.46 k. In General. Most Cited Cases

NLRA did not preempt public project labor agreement (PLA); fact that New Jersey township, the public purchaser, created the prehire agreement was irrelevant. National Labor Relations Act, § 1 et seq., as amended, 29 U.S.C.A. § 151 et seq.; N.J.S.A. § 52:38-1 et seq.

[13] Federal Courts 170B 371

170B Federal Courts
170BVI State Laws as Rules of Decision
170BVI(A) In General
170Bk371 k. Nature and Extent of Authority. Most Cited Cases
In addition to general presumption against finding civil remedy when none is explicitly conferred, federal courts are reluctant to innovate state right of action when state's own courts have not done so.

[14] Action 13 3

13 Action
13I Grounds and Conditions Precedent
13k3 k. Statutory Rights of Action. Most Cited Cases

Labor and Employment 231H 1319

231H Labor and Employment
XII Labor Rela
1HXII(E) La Contracts
231Hk1318 Actions for Breach
231Hk1319 k. In General. Mo ted
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New Je 's stat or agreemen es no te private right o on. N.J.S.A. s 38-1 et

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OPINION

BUMB, District Judge.

***1** This case arises from a dispute over the assignment of roofing work in the construction of Egg Harbor Township's community center. Plaintiff Sheet Metal Workers International Association Local Union No. 27, AFL-CIO ("Local 27") alleges that by assigning work to a competing union, defendant-contractors E.P. Donnelly, Inc. ("Donnelly") and Sambe Construction Co. Inc. ("Sambe") committed common-law breach of contract and violated New Jersey's statute authorizing project labor agreements, N.J. Stat. Ann. 52:38-1, *et seq.* This matter now comes before the Court upon motions for summary judgment by all three parties. Donnelly and Sambe have opposed Local 27's motion, and Local 27 has likewise opposed the motions of Donnelly and Sambe. For the reasons stated herein, the Court will grant-in-part and deny-in-part all three motions.

LEGAL STANDARD

Kmart Corp., 260 F.3d 228, 232 (3d Cir.2001) (quoting Fed.R.Civ.P. 56(e)).

BACKGROUND

The facts underlying this litigation are largely un-

statute, 28 U.S.C.A. § 1738. Any decision to accord preclusive effect thus must be a matter of a judicially fashioned preclusion rule.").

***4** [2][3][4] Judicial proceedings ordinarily accord preclusive effect to arbitrations that have already

PLA.... Local 27 then decided-as was its right-to invoke the procedure specifically agreed upon under Section 3C to resolve 'all unresolved jurisdictional disputes arising under this [PLA].' ").) Because the matter of Arbitrator Aiges's jurisdiction was disputed and resolved before him, this Court is bound by his finding.[FN14] Jurisdiction before Arbitrator Aiges was therefore proper.

Arbitrator Aiges cited two reasons for his determination that the roofing work should have been assigned to Local 27, rather than Local 623. The primary justification for his ruling was founded in article 10, section 2(b), of the PLA, which requires work assignments to be made "according to area practice...." (PLA, art. 10, § 2(b).) Because "[t]he vast majority of projects involving similar work in South Jersey has been performed by Local 27 members," Arbitrator Aiges determined that "area practice" compelled assignment of the work to Local 27. (Arb. Op. 12 [Dkt. Ent. 91:6].) Secondarily, Arbitrator Aiges, citing a letter by the Egg Harbor Township Administrator, explained that the work should have been assigned to a PLA signatory. As Local 27 had assented to the PLA, while Local 623 had not, this further required assignment of the work to Local 27. (Arb.Op.12-13.) On these two grounds, Arbitrator Aiges found that "Sambe [and] Donnelly violated the ... PLA by assigning the disputed work to members of ... Local 623." [FN15] (Arb.Op.13-14.) This Court is bound by his finding.[FN16] Accordingly, Local 27 has established as a matter of law that obligations owed by Sambe and Donnelly under the PLA were not performed.

2. *Validity of the PLA*

Having established that the assignment of work to Local 623 violated the PLA and caused damage to

Boston Harbor, 507 U.S. at 231-32. The crux of the Court's decision was that where pre-hire agreements are at issue, the same rules govern public and private market participants. *See id.* at 233 ("[W]hen the [State], acting in the role of purchaser of construction services, acts just like a private contractor would act, and conditions its purchasing upon the very sort of labor agreement that Congress explicitly authorized and expected frequently to find, it does not 'regulate' the workings of the market forces that Congress expected to find; it exemplifies them.").

Sambe and Donnelly try to distinguish *Boston Harbor* from the facts of this case by noting that a private contractor, Kaiser Engineers, Inc., created the pre-hire agreement in *Boston Harbor*, while Egg Harbor Township, the public purchaser, created it here. This amounts to a distinction without a difference. As the Third Circuit has explained, "[A]fter *Boston Harbor*, preemption analysis only comes into play when the state's activity in question constitutes 'regulation.' But a state will not be subject to preemption analysis when it acts as a 'market participant.' " *Hotel Employees & Restaurant Employees Union, Local 57 v. Sage Hospitality Resources, LLC*, 390 F.3d 206, 213 (3d Cir.2004). There is no dispute that Egg Harbor Township acted as any private developer would in requiring that Sambe and its subcontractors assent to the PLA as a precondition to participating in construction of the public community center.[FN18] The fact that the entity negotiating the pre-hire agreement here was public rather than private is of no moment, as numerous courts have applied the *Boston Harbor* rule to public project labor agreements. *See, e .g., Colfax Corp. v. Illinois State Toll Highway Authority*, 79 F.3d 631, 634-35 (7th Cir.1996); *Lott Constructors, Inc. v. Camden County Bd. of Chosen Freeholders*, No. 93-5636, 1994 WL 263851, *13-19 (D.N.J. Jan.31, 1994) (Simandle); *George Harms*, 137 N.J. at 14-16, 644 A.2d 76; *New York State Chapter, Inc. v. New York State Thruway Authority*, 207 A.D.2d 26, 620 N.Y.S.2d 855, 856-57 (N.Y.App.Div.1994). Sambe and Donnelly have not cited to a single court that has adopted their narrow reading of *Boston Harbor*, and this Court finds no reason to do so here.[FN19] Accordingly, federal preemption does not undermine the validity of the PLA in this case.

ii. *Lawfulness of the PLA under New Jersey's Project Labor Agreement Statute*

***7** [9] Sambe and Donnelly next argue that the PLA violates New Jersey's statute authorizing project labor agreements, N.J. Stat. Ann. § 52:38-1, *et seq.* The statute provides, in relevant part:

> A public entity may include a project labor agreement in a public works project on a project-by-project basis, if the public entity determines, taking into consideration the size, complexity and cost of the public works project, that, with respect to that project the project labor agreement will meet the requirements of section 5 of this act, including promoting labor stability and advancing the interests of the public entity in cost, efficiency, skilled labor force, quality, safety and timeliness.

N.J. Stat. Ann. § 52:38-3. Section 5 continues:

> Each project labor agreement executed pursuant to the provisions of this act shall:
>
> a. Advance the interests of the public entity, including the interests in cost, efficiency, quality, timeliness, skilled labor force, and safety;
>
> b. Contain guarantees against strikes, lock-outs, or other similar actions; ...
>
> f. Fully conform to all statutes, regulations, executive orders and applicable local ordinances regarding the implementation of set-aside goals for women and minority owned businesses, the obligation to comply with which shall be expressly provided in the project labor agreement....

N.J. Stat. Ann. § 52:38-5. Sambe and Donnelly contend that the Township adopted the PLA

without making a predicate determination that the enumerated requirements were met.

Specifically, Sambe and Donnelly cite the Township Administrator's admission "that the Township never performed any study regarding the need for a project labor agreement" as evidence that the Township failed to make the statutorily required findings. (Sambe's Mot. Br. 27.) However, the statute does not require municipalities to perform a study, and Defendants have cited nothing in support of their conclusion that the Township did not make the required determinations. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) ("[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

only monetary damages for breach of the PLA. Enforcement of the PLA with an award of monetary damages against Sambe and Donnelly does not conflict with the NLRB's *10(k) Decision* resolving the jurisdictional dispute between Local 27 and Local 623.

The Court acknowledges that the Third Circuit case *Local 30 II* appears at first pass to support the proposition that "there is no material difference between seeking work and seeking payment in lieu of work ...." *Local 30, United Slate, Tile & Comp'n Roofers, Damp & Waterproof Workers Ass'n, AFL-CIO v. NLRB*, 1 F.3d 1419, 1427-28 (3d Cir.1993) (hereinafter *"Local 30 II"*). The precedential value of this proposition is a matter of dispute, however, since the Third Circuit adopted what appears to be an opposite view two years earlier, in *Local 30 I. See Hoeber ex rel. NLRB v. Local 30, United Slate, Tile & Comp'n Roofers, Damp and Waterproof Workers Ass'n, ALF-CIO*, 939 F.2d 118, 124 n. 10 (3d Cir.1991) (hereinafter *"Local 30 I"*) ("We cannot agree with the NLRB that seeking enforcement of an arbitral award based on a breach of contract to assign work is identical to seeking the disputed work itself.").

Even were *Local 30 II* construed as a reversal of *Local 30 I*, the present case is distinguishable from *Local 30 II* in a number of important respects. First, here, the NLRB's *10(k) Decision* includes the specific qualification that, "An award of the disputed work to Local 623 [does] not ... invalidate the PLA. [Donnelly] continue[s] to be bound under the terms of the PLA, and the parties to the PLA ... *retain any rights they may have under state law to bring a suit for damages against [Donnelly] for any breach of the PLA." 10(k) Decision*, 351 NLRB at 1419-20 (emphasis added). The *10(k) Decision* continued, "Both Local 623 and (arguably) Local 27 have separate binding contracts with [Donnelly], and [Donnelly's] obligations under one contract cannot be used to void its obligations under the other." *Id.* at 1420. Thus, unlike *Local 30 II*, the *10(k) Decision* here distinguished its award of work from this contract-enforcement damages action. A finding that this damages action conflicts with the *10(k) Decision*-when the *10(k) Decision* limited itself so as to permit this damages action-would be nonsensical.

***9** Second, *Local 30 II* presented a run-of-the-mill

ute authorizing project labor agreements, N.J. Stat. Ann. § 52:38-1, *et seq.* Sambe and Donnelly contend that the statute does not create a private right of action. The Court agrees.

[12][13] To determine whether a statute implies a right of action, New Jersey courts consider "whether the plaintiff is 'one of the class for whose *especial* benefit the statute was enacted;' whether there is any evidence that the Legislature intended to create a private cause of action under the statute; and

> PLA. We also believe that the Legislature is better suited to accommodate the several interests of labor, management, and the public. Until such time as the Legislature acts, however, we are obligated to adjudicate such bid specifications case-by-case.

Tormee Const., 143 N.J. at 151, 669 A.2d 1369

> benefit funds. In return for the proprietor's promise to insist that contractors sign the agreement, the organization promises the proprietor labor peace throughout the life of the construction project.
>
> *Id.* at 23-24, 644 A.2d 76 (internal citations omitted).

FN2. Importantly, this fact is undisputed. (*See* Donnelly's Stat. Mat. Fcts. ¶¶ 5-6 [Dkt. Ent. 90:1]; Donnelly's Ctr.-Stat. Mat. Fcts. ¶¶ 5, 10 [Dkt. Ent. 104].) There is no doubt that: (a) Donnelly executed the Letter of Assent, (b) the Letter of Assent required that parties hired by Donnelly agree to the PLA's terms, and (c) Donnelly hired Local 623 in spite of its refusal to be bound by the PLA. Although Donnelly has argued, vigorously and repeatedly, that its obligations under the Letter of Assent and the PLA are not enforceable in this Court, Donnelly does not dispute that it betrayed its obligations under the PLA and the Letter of Assent in hiring Local 623.

FN3. It is curious why Local 27 sought confirmation of Arbitrator Aiges's award by filing a grievance with the JAB pursuant to its collective bargaining agreement, rather than timely petitioning this Court to confirm the award before the NLRB issued its *10(k) Decision. See* 9 U.S.C. §§ 9, 13 (establishing the procedure for confirmation of an arbitration award in federal court).

> In the course of this litigation, the parties have disputed whether they are bound by Local 27's collective bargaining agreement and, consequently, are bound by the JAB decision. Local 27 has argued that its collective bargaining agreement was incorporated into the PLA by way of attachment, while Sambe and Donnelly have argued that the collective bargaining agreement was not attached to the PLA. The Court need not resolve this fact dispute, however, because the JAB proceeding is not material to its ruling today.

FN4. Local 623 was subsequently dismissed from the case.

FN5. As mentioned in note 3, *supra*, the matter before the Court was a preliminary injunction, not a petition to enforce the arbitration award pursuant to 9 U.S.C. §§ 9, 13.

FN6. Summary judgment was denied as premature, pursuant to Rule 56(f). (Op. 9-13 [Dkt. Ent. 60].)

FN7. The Court denied the NLRB's emergent application for a variety of reasons set forth in its September 2, 2008 Opinion. [Dkt. No. 08-1896, Ent. 15.] First, the Court found no conflict between the NLRB's *10(k) Decision* and the relief sought by Local 27 here, because the *10(k) Decision* included the express qualification that parties to the PLA would retain the right to sue Donnelly for damages. Second, the Court explained that, unlike the precedent cases, this is not a mere jurisdictional dispute between competing unions; it is a dispute arising from an employer's voluntary assumption of conflicting contractual obligations. If obligations under a project labor agreement can be vitiated by mere assent to a conflicting contract, then project labor agreements, which are authorized by state statute, would be rendered wholly ineffective. Third, the Court found that an injunction-a "highly disfavored remedy"-was inappropriate here, as such relief was neither necessary to preserve the status quo, nor to protect the public. Finally, the Court held that "the

10(k) procedure exists to resolve the inevitable jurisdictional disputes that arise between unions without costly work stoppages, not to exonerate employers with unclean hands." (Op.23.) Accordingly, an injunction would not have advanced the statute's remedial purposes.

FN8. The Court questions whether its ruling today renders moot the Third Circuit appeal. The conclusion of this case would seem to render a petition to enjoin the prosecution moot, leaving no "case or controversy."

FN9. Sambe and Donnelly have not questioned the standing of Local 27 to bring a contract claim against them. As a party to the PLA, Local 27 clearly has standing to sue for breach of the PLA. Further, because the Letter of Assent was executed for the benefit of PLA signatories, Local 27 was a third-party beneficiary of the Letter of Assent. *See Werrmann v. Aratusa, Ltd.*, 266 N.J.Super. 471, 476, 630 A.2d 302 (1993).

FN10. Sambe and Donnelly argue that Arbitrator Aiges's award is not enforceable in this Court. These arguments overlap with the final element of a contract claim, namely, validity of the contract. As the Court will discuss, *infra*, because the PLA is valid and enforceable, Arbitrator Aiges's award may be enforced here.

FN11. This issue was not raised by the parties. Local 27 has asserted that the Court should be deferential to Arbitrator Aiges's ruling, but the parties neglected to discuss what legal effect the unconfirmed arbitration has in this proceeding.

FN12. Restatement (2d) of Judgments § 84 has been cited approvingly by the Third Circuit in *Witkowski v. Welch*, 173 F.3d 192, 199-200 (3d Cir.1999). That case is distinguishable, however, since the arbitration award had been confirmed by a district court.

FN13. Sambe and Donnelly have raised only one argument implicating the fairness of the arbitration proceeding. They allege that Arbitrator Aiges contacted Robert Tarby, Local 623's representative, and inquired whether Local 623 would agree to sign the PLA. (Donnelly's Mot. Br. 15-16.) Assuming the truth of this allegation, it is not clear why this would undermine the arbitration proceeding's fairness. Such contact could only redound to the benefit of Sambe and Donnelly, as Local 623's agreement to be bound by the PLA would likely have resulted in a finding that Sambe and

(PLA, art. 9, § 1(b).) It is inapposite that Local 27 began, but did not complete, the article 9 procedure, because Local 27 had no obligation to seek redress therefore proper.

FN15. Sambe and Donnelly argue that this finding was beyond the scope of Arbitrator Aiges's authority, because article 10 of the PLA permits only the resolution of jurisdictional disputes, not contract claims. However, Arbitrator Aiges's finding that Sambe and Donnelly violated the PLA was an analytical step in his resolution of the jurisdictional dispute. Accordingly, this finding was not outside the scope of his article 10 authority.

FN16. Even were Arbitrator Aiges's ruling not entitled to preclusive effect, the Court rules in the alternative that the undisputed evidence demonstrates that Sambe and Donnelly breached their PLA obligations.

As to Donnelly: It is undisputed (1) that Donnelly was bound by the PLA, (2)

10(k) Decision. "[A] a party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory." Wright, Miller, & Cooper, 18B *Federal Practice & Procedure: Jurisdiction 2d* § 4477 (WL 2009); *see also Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 358 (3d Cir.1996) ("[Judicial estoppel] is designed to prevent litigants from playing fast and loose with the courts." (citation omitted)). Although the argument by Sambe and Donnelly is improper, in the interest of completeness, the Court will entertain the argument and will reject it on its merits.

FN22. Project labor agreements, by their very operation, must act as "master agreements" that supercede all other labor contracts (especially collective bargaining agreements) bearing on a particular project. *George Harms*, 137 N.J. at 24, 644 A.2d 76. The PLA contains a supremacy provision establishing its superior status over collective bargaining agreements. (PLA, art. 2, § 4.) Furthermore, the State of New Jersey has adopted a public policy favoring the use of project labor agreements, which would be vitiated if obligations arising under project labor agreements were unenforceable.

FN23. "People are free to sign legal documents without reading them, but the documents are binding whether read or not. Any other approach would undermine the validity of the written word and encourage people either to close their eyes (hoping that they can reap the benefits without incurring the costs and risks of the venture) or to come up with hard-to-refute tales of not reading or understanding the documents they sign." *Novitsky v. American Consulting Engineers, LLC*, 196 F.3d 699, 702 (7th Cir.1999).

FN24. The Court makes these observations only to distinguish this case from *Local 30 II*. The Court has proceeded upon the assumption that Donnelly's account of the facts is true. Accordingly, nothing in this discussion shall be construed as a weighing of the evidence.

FN25. By way of clarification, the Court does *not* hold that the disputed roofing work should ultimately have been performed by Local 27 rather than Local 623. It appears that Donnelly effectively promised the work to two different unions. The NLRB decided that Local 623 had a stronger claim to the work than Local 27. The Court has no quarrel with that determination. (Indeed, the Court take no position whatsoever on that issue, as it is beyond the scope of the Second Amended Complaint.) The Court today holds only that Donnelly continues to be liable for effectively promising the work to Local 27.

FN26. The parties' briefs do not discuss the matter of damages, so the Court is unsure of whether a valuation of the contract claim will turn upon any disputed issues of material fact. The parties are therefore instructed to promptly confer and advise the Court on whether a brief trial will be necessary to determine damages.

FN27. The parties neglected to discuss this background in their briefs.

D.N.J.,2009.
Sheet Metal Workers Intern. Ass'n Local Union No. 27, AFL-CIO v. E .P. Donnelly, Inc.
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